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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Patrick Dingman,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-17-02167-PHX-JZB

ORDER

15
16 Plaintiff Patrick Keith Dingman seeks review under 42 U.S.C. § 405(g) of the final
17 decision of the Commissioner of Social Security (“the Commissioner”), which denied him
18 disability insurance benefits under sections 216(i), 223(d), and 1614(a)(3)(A) of the Social
19 Security Act. Because the decision of the Administrative Law Judge (“ALJ”) is supported
20 by substantial evidence and is not based on legal error, the Commissioner’s decision will
21 be affirmed.

22 **I. Background.**

23 On February 11, 2011, Plaintiff applied for disability insurance benefits and
24 supplemental security income, alleging disability beginning June 1, 2006. On October 3,
25 2012, he appeared with his attorney and testified at a hearing before the ALJ. A vocational
26 expert also testified. At the hearing, Plaintiff’s counsel requested an amended onset date of
27 December 1, 2009. On October 23, 2012, the ALJ issued a decision that Plaintiff was not
28 disabled within the meaning of the Social Security Act. The Appeals Council denied

1 Plaintiff's request for review of the hearing decision, making the ALJ's decision the
2 Commissioner's final decision.

3 **II. Legal Standard.**

4 The district court reviews only those issues raised by the party challenging the ALJ's
5 decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The court may set
6 aside the Commissioner's disability determination only if the determination is not
7 supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625,
8 630 (9th Cir. 2007). Substantial evidence is more than a scintilla, less than a preponderance,
9 and relevant evidence that a reasonable person might accept as adequate to support a
10 conclusion considering the record as a whole. *Id.* In determining whether substantial
11 evidence supports a decision, the court must consider the record as a whole and may not
12 affirm simply by isolating a "specific quantum of supporting evidence." *Id.* As a general
13 rule, "[w]here the evidence is susceptible to more than one rational interpretation, one of
14 which supports the ALJ's decision, the ALJ's conclusion must be upheld." *Thomas v.*
15 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted).

16 Harmless error principles apply in the Social Security Act context. *Molina v. Astrue*,
17 674 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless if there remains substantial
18 evidence supporting the ALJ's decision and the error does not affect the ultimate non-
19 disability determination. *Id.* The claimant usually bears the burden of showing that an error
20 is harmful. *Id.* at 1111.

21 The ALJ is responsible for resolving conflicts in medical testimony, determining
22 credibility, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.
23 1995). In reviewing the ALJ's reasoning, the court is "not deprived of [its] faculties for
24 drawing specific and legitimate inferences from the ALJ's opinion." *Magallanes v. Bowen*,
25 881 F.2d 747, 755 (9th Cir. 1989).

26 **III. The ALJ's Five-Step Evaluation Process.**

27 To determine whether a claimant is disabled for purposes of the Social Security Act,
28 the ALJ follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the

1 burden of proof on the first four steps, but at step five, the burden shifts to the
2 Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999).

3 At the first step, the ALJ determines whether the claimant is engaging in substantial
4 gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not disabled and the
5 inquiry ends. *Id.* At step two, the ALJ determines whether the claimant has a “severe”
6 medically determinable physical or mental impairment. § 404.1520(a)(4)(ii). If not, the
7 claimant is not disabled and the inquiry ends. *Id.* At step three, the ALJ considers whether
8 the claimant’s impairment or combination of impairments meets or medically equals an
9 impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Pt. 404. § 404.1520(a)(4)(iii).
10 If so, the claimant is automatically found to be disabled. *Id.* If not, the ALJ proceeds to step
11 four. At step four, the ALJ assesses the claimant’s residual functional capacity (“RFC”)
12 and determines whether the claimant is still capable of performing past relevant work. §
13 404.1520(a)(4)(iv). If so, the claimant is not disabled and the inquiry ends. *Id.* If not, the
14 ALJ proceeds to the fifth and final step, where he determines whether the claimant can
15 perform any other work based on the claimant’s RFC, age, education, and work experience.
16 § 404.1520(a)(4)(v). If so, the claimant is not disabled. *Id.* If not, the claimant is disabled.
17 *Id.*

18 At step one, the ALJ found that Plaintiff meets the insured status requirements of
19 the Social Security Act through December 31, 2011, and that he has not engaged in
20 substantial gainful activity since June 1, 2006. At step two, the ALJ found that Plaintiff has
21 the following severe impairments: “narcolepsy, sleep apnea, and obesity (20 CFR
22 404.1420(c)).” (AR 407.)

23 At step three, the ALJ determined that, through the date of last insured, Plaintiff did
24 not have an impairment or combination of impairments that meets or medically equals an
25 impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Pt. 404. At step four, the ALJ
26 found that Plaintiff has the RFC to perform:

27 at least light work and some medium exertion jobs as defined in 20 CFR
28 404.1567(c) except the claimant could never climb ladders, ropes or
scaffolds. He must avoid hazards such as moving machinery or unprotected
heights.

1 (AR 408.)

2 The ALJ further found that Plaintiff, through the date of last insured, was unable to
3 perform any of his past relevant work. At step five, the ALJ concluded that, considering
4 Plaintiff's age, education, work experience, and residual functional capacity, through the
5 date last insured, "there were jobs that existed in significant numbers in the national
6 economy that Plaintiff could have performed." (AR 414.)

7 **IV. Analysis.**

8 Plaintiff argues the ALJ's decision is defective for four reasons: (1) "[t]he ALJ erred
9 by omitting/rejecting the medical opinions of Dr. Anderson, treating neurologist/sleep
10 specialist" (doc. 14 at 9-20); (2) the ALJ erred by crediting two non-examining physician
11 opinions with significant weight (*id.* at 20); (3) "[t]he ALJ erred by rejecting [Plaintiff's]
12 symptom testimony" (*id.* at 22-27); and (4) the ALJ erred "by not finding cataplexy and
13 hypersomnia were 'severe'" medical impairments at step two (*id.* at 9 n.5). The Court will
14 address each argument below;

15 **b. Weighing of Medical Source Evidence.**

16 Plaintiff first argues that the ALJ improperly weighed the medical opinions of his
17 treating physician, Dr. Troy Anderson, and examining physicians Drs. Larry Nichols, and
18 Brian Briggs.

19 **1. Legal Standard.**

20 The Ninth Circuit distinguishes between the opinions of treating physicians,
21 examining physicians, and non-examining physicians. *See Lester v. Chater*, 81 F.3d 821,
22 830 (9th Cir. 1995). Generally, an ALJ should give greatest weight to a treating physician's
23 opinion and more weight to the opinion of an examining physician than to one of a non-
24 examining physician. *See Andrews v. Shalala*, 53 F.3d 1035, 1040-41 (9th Cir. 1995); *see*
25 *also* 20 C.F.R. § 404.1527(c)(2)-(6) (listing factors to be considered when evaluating
26 opinion evidence, including length of examining or treating relationship, frequency of
27 examination, consistency with the record, and support from objective evidence). If it is not
28 contradicted by another doctor's opinion, the opinion of a treating or examining physician

1 can be rejected only for “clear and convincing” reasons. *Lester*, 81 F.3d at 830 (citing
2 *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988)). A contradicted opinion of a treating
3 or examining physician “can only be rejected for specific and legitimate reasons that are
4 supported by substantial evidence in the record.” *Lester*, 81 F.3d at 830-31 (citing *Andrews*,
5 53 F.3d at 1043).

6 An ALJ can meet the “specific and legitimate reasons” standard “by setting out a
7 detailed and thorough summary of the facts and conflicting clinical evidence, stating his
8 interpretation thereof, and making findings.” *Cotton v. Bowen*, 799 F.2d 1403, 1408 (9th
9 Cir. 1986). But “[t]he ALJ must do more than offer [her] conclusions. [She] must set forth
10 [her] own interpretations and explain why they, rather than the doctors’, are correct.”
11 *Embrey*, 849 F.2d at 421-22. The Commissioner is responsible for determining whether a
12 claimant meets the statutory definition of disability and does not give significance to a
13 statement by a medical source that the claimant is “disabled” or “unable to work.” 20
14 C.F.R. § 416.927(d).

15 **2. Dr. Troy Anderson, M.D.**

16 **A. Treatment History and Medical Opinions.**

17 Dr. Anderson is a neurologist and sleep specialist who treated Plaintiff from 2011
18 through 2016. (AR 238-66, 273-96, 385-93, 301-02, 691-713.) Dr. Anderson rendered
19 eight medical opinions on Plaintiff’s functional limitations during that time frame:

- 20 • In July 2011, Dr. Anderson opined that Plaintiff could not be gainfully employed
21 because of his daytime sleepiness. Dr. Anderson also notes that, at that time,
22 Plaintiff had failed multiple medications for narcolepsy and his daytime sleepiness
23 persisted. (AR 301-02.)
- 24 • In April 2012, Dr. Anderson assessed work limitations from narcolepsy and sleep
25 apnea with four narcoleptic episodes daily, symptoms lasting more than three hours,
26 severe daytime sleepiness, and a total restriction from unprotected heights/moving
27 machinery/driving automotive equipment. Dr. Anderson again noted that
28 medications had failed. (AR 305-06.)

- 1 • In July 2012, Dr. Anderson again assessed that Plaintiff's impairments would limit
2 his ability to perform work related activities. He notes that Plaintiff was still
3 suffering from narcolepsy and daytime sleepiness, having one episode daily with
4 symptoms lasting more than three hours, and advising total restriction from
5 unprotected heights/moving machinery/driving automotive equipment. (AR 307-
6 08.)
- 7 • In September 2012, Dr. Anderson assessed that Plaintiff continued to have
8 difficulties with daytime sleepiness and cataplexy, and noted that Plaintiff could
9 not afford his medication. Nor could Plaintiff afford the "MR angiogram" that
10 Dr. Anderson ordered six months prior. Dr. Anderson concludes that Plaintiff
11 "cannot perform work given his difficulties with severe daytime sleepiness" and
12 state that "[h]e is to continue to refrain from driving and work with dangerous
13 equipment as well as work at heights." (AR 385-86.)
- 14 • In August 2014, Dr. Anderson assessed that Plaintiff "has improved in terms of
15 enjoying his life but has not improved to [sic] he can't go to work." (AR 702.)
16 Dr. Anderson noted that Plaintiff experienced no side effects with Provigil, and that
17 he increased the prescribed dosage of the drug to twice per day "to see if we can
18 get up to this point." (*Id.*) "In the meantime, we continue to support disability." (*Id.*)
- 19 • In August 2016, Dr. Anderson completed a Medical Assessment of Ability to do
20 Work-Related Physical Activities. (AR 740-41.) Therein, he found that Plaintiff's
21 severe sleepiness precluded an 8-hour work day. (AR 740.) Additionally, he found
22 that Plaintiff, in an 8-hour work day, had the following limitations: Plaintiff can sit
23 for six hours, stand/walk for six hours, lift 50 pounds or more, carry 50 pounds or
24 more, and Plaintiff's moderately severe symptoms would cause him to miss 4-5
25 days of work per month. (AR 740-41.) Dr. Anderson also notes that Plaintiff's
26 medication causes side effects including "chest pain" and "palpation[.]" (AR 741.)
- 27 • In September 2016, Dr. Anderson completed another Medical Assessment of
28 Ability to do Work-Related Physical Activities. (AR 742-43.) Therein, he found

1 that Plaintiff's Hypersomnia, which causes severe daytime sleepiness, precluded
2 Plaintiff from completing an 8-hour work day. (AR 742.) Dr. Anderson added that
3 Plaintiff's symptoms severely impacted Plaintiff's concentration and ability to stay
4 on task, and that he would miss 5+ days of work per month due to his medical
5 condition. (AR 742-43.) Dr. Anderson also circled "None" in response to the
6 question "Is the patient additionally limited by Pain or fatigue? If yes, set forth the
7 degree of limitation." (AR 743.)

- 8 • In October 2016, Dr. Anderson completed a third Medical Assessment of Ability
9 to do Work Related Physical Activities. (AR 744-45.) In this assessment, Dr.
10 Anderson again opined that Plaintiff's conditions – in this instance listed as
11 "narcolepsy" and "uncontrolled sleepiness" – preclude an 8-hour work day.
12 (AR 744.) Dr. Anderson notes that Plaintiff experiences seen episodes on
13 "sleepiness" a day, and that the average episode is 2+ hours in duration. (*Id.*) Dr.
14 Anderson represents that Plaintiff's fatigue is a moderately severe limitation,
15 Plaintiff will miss work 5+ days per month, Plaintiff's medication does not cause
16 him side-effects and the medical limitations were in existence as of June 1, 2006.
17 (AR 745.)

18 **B. ALJ Assessment.**

19 Dr. Anderson's opinions are controverted by the opinion of consultative examiner,
20 Dr. Brian Briggs. (AR 413.) Dr. Briggs examined Plaintiff on May 3, 2016, and opined
21 that Plaintiff had fewer limitations than those assessed by Dr. Anderson. (AR 653.) In his
22 report, Dr. Briggs concluded that Plaintiff's conditions would not impose limitations for
23 12 continuous months. (AR 657.) Additionally, Dr. Briggs found that Plaintiff had no
24 physical limitations, with the exception that Plaintiff can tolerate only occasional exposure
25 to unprotected heights, or frequent exposure to moving mechanical parts, and can only
26 frequently climb ladders or scaffolds. (AR 660-61.) Dr. Briggs also found that Plaintiff's
27 narcolepsy had improved to the point that it "is no longer an issue." (AR 657.) Because
28 Dr. Anderson's opinions were contradicted by Dr. Briggs's opinion, the ALJ may discount

1 Dr. Anderson's opinions for specific and legitimate reasons supported by substantial
2 evidence. *Lester*, 81 F.3d at 830-31.

3 In his decision, the ALJ affords Dr. Anderson's opinions, as a whole, "little weight."
4 (AR 412.) Because Dr. Anderson provided multiple opinions spanning roughly five years,
5 the ALJ attempts to address each of Dr. Anderson's opinions by grouping them into three
6 "batches": (1) the opinion from prior to Plaintiff's date of last insured, December 31, 2011,
7 (2) the opinions made in April and July of 2012, and (3) the opinions made in August and
8 September of 2016. (AR 412-413.) The ALJ does not address Dr. Anderson's medical
9 opinions from August 2014, or from October 2016. (*See id.*) The Court will address the
10 ALJ's reasoning for each batch below.

11 C. July 2011 Opinion.

12 The ALJ first addresses Dr. Anderson's July 2011 opinion. (AR 412-13.) In that
13 opinion, Dr. Anderson records Plaintiff's subjective report that "because of his daytime
14 sleepiness he still cannot be gainfully employed," then proceeds to provide a physical
15 assessment of Plaintiff, diagnose him with Narcolepsy with Cataplexy, and state in the
16 discussion portion of the report that "[w]e support this patient's disability claim."
17 (AR 301-02.)

18 The ALJ provided the following reasons for discounting Dr. Anderson's July 2011
19 opinion: (1) Dr. Anderson "did not provide an assessment of the claimant's functional
20 limitations at that time" (*id.*); (2) Dr. Anderson's "opinion is inconsistent with the
21 treatment record noting improvement with medication and a normal physical and
22 neurological examination[.]" (*id.*); and (3) that Dr. Anderson's opinion is "inconsistent
23 with the claimant's significant activities of daily living during the period" (AR 412-13).
24 The Court finds that the ALJ's decision to discount Dr. Anderson's opinions was [not]
25 based on specific and legitimate reasons.

26 The ALJ's first reason for discounting Dr. Anderson's July 2011 medical opinion is
27 that Dr. Anderson failed to provide a functional assessment supporting his conclusion.
28 (AR 412.) This reason is not legitimate for rejecting a treating physician's opinion, because

1 in July 2012, Dr. Anderson provided Plaintiff with a functional assessment specifically
2 noting that the restrictions therein were in existence prior to December 31, 2011. (AR 307-
3 08.)

4 The ALJ's second reason for discounting Dr. Anderson's July 2011 medical opinion
5 is that the "opinion is inconsistent with treatment record noting improvement with
6 medication and a normal physical and neurological examination." (AR 412.) An ALJ may
7 rely on notes indicating a condition responded well to treatment, and impairments that can
8 be controlled with treatment are not disabling. *See Crane v. Shalala*, 76 F.3d 251, 254 (9th
9 Cir. 1996) (upholding credibility finding where notes from treating therapist suggested
10 depression responded well to treatment); *Warre ex rel. E.T. IV v. Barnhart*, 439 F.3d 1001,
11 1006 (9th Cir. 2006) ("Impairments that can be controlled effectively with medication are
12 not disabling for the purpose of determining eligibility for SSI benefits.").

13 In its response, the Commissioner cites to the record showing Plaintiff's
14 impairments were controllable with treatment. Specifically, the record shows
15 improvement of Plaintiff's cataplexy with Xyrem (AR 301, 411), and improvement in
16 Plaintiff's narcolepsy on Nuvigil, after the date of last insured (AR 411, 691). Further, Dr.
17 Briggs examination notes that narcolepsy "was no longer an issue" due to Nuvigil
18 (AR 411, 653, 655). (Doc. 15 at 14.)

19 Plaintiff argues that the Commissioner's citations are misleading and incomplete
20 because Plaintiff's improvement with Xyrem is noted as being limited to his cataplexy.
21 (AR 301), and although Plaintiff was afforded some relief from his narcolepsy with
22 Nuvigil, it was "not enough to increase his daytime sleepiness for employment" (AR 691).
23 (Doc. 25 at 8-9.) But, in that same treatment record, Dr. Anderson notes that he increased
24 Plaintiff's dosage of Nuvigil to 250mg, and found that with the increased dosage,
25 "[Plaintiff] has potential of gaining employment" and "is trying to find work." (AR 691.)

26 And although Plaintiff "had difficulty getting [Nuvigil] approved" by insurance
27 (AR 691), the record shows that he was still taking the medication as of July 4, 2016 (AR
28 732). The record does not show that Plaintiff was denied coverage for Nuvigil, or that he

1 was unable to continue procuring it for himself, as he apparently did for several months
2 between at least February 2016 and July 2016. (*See* AR 691, 732.) Additionally, when Dr.
3 Briggs examined Plaintiff in May 2016, during the time frame that he was on Nuvigil,
4 Dr. Briggs observed that Plaintiff's narcolepsy was "no longer an issue" due to the
5 Nuvigil. (AR 653, 655.) Accordingly, the Court finds that the ALJ's second reason for
6 discounting Dr. Anderson's July 2011 opinion is supported by specific and legitimate
7 reasons, and was not error.

8 **D. April and July 2012 Opinions.**

9 In April and July 2012, Dr. Anderson completed functional assessments of
10 Plaintiff's capacity to engage in work related activities. (AR 305-06, 307-08.) Therein, Dr.
11 Anderson indicates that Plaintiff has between one and four narcoleptic episodes per day,
12 with each episode lasting more than three hours. (AR 305, 307.) Dr. Anderson opined
13 Plaintiff should have no exposure to unprotected heights, moving machinery, or driving.
14 (AR 306, 308.) He further opined Plaintiff's "degree of restriction" was "moderately
15 severe," defined as seriously affecting ability to function, and "severe," defines as extreme
16 impairment in ability to function. (*Id.*) Dr. Anderson opined that Plaintiff's restrictions
17 existed at that level on or before the date of last insured. (AR 308.)

18 In his decision, the ALJ discounts these opinions for three reasons: (1) the "opinions
19 are inconsistent with the medical evidence of record discussed above, including noted
20 improvement with Xyrem" (AR 413); (2) the "opinion that claimant experienced
21 symptoms four times a day and symptoms lasted for three hours or more is inconsistent
22 with the evidence that the claimant was the primary care provider for his young son while
23 his wife was at work" (*id.*); and (3) "these opinions were written after the date last insured"
24 (*id.*). The Commissioner concedes that the ALJ's third reason is error (doc. 15 at 17 n.5),
25 but argues that the ALJ's first and second reasons are sufficient for the Court to affirm the
26 ALJ's decision. (*Id.* at 17.) The Court agrees.

27 The ALJ's first reason, that the opinions are inconsistent with the medical evidence
28 of record discussed above, is supported by the fact that Plaintiff showed marked

1 improvement with medication in treating both his cataplexy and his narcolepsy. (*See*
2 AR 301, 691, 732.) As discussed above, impairments that can be controlled with treatment
3 are not disabling. *See Warre*, 439 F.3d at 1006.

4 The ALJ's second reason, that the statement Plaintiff has symptoms lasting at least
5 three or more hours at a time is inconsistent with Plaintiff's childcare activities, is also
6 specific and legitimate. This finding is reasonable. As stated by The Honorable Judge G.
7 Murray Snow, in previous review of this case, "If Dingman's testimony is true, his four-
8 year-old child lacks supervision during much of the day. Thus, Dingman's testimony is
9 not credible unless one believes that he and his wife neglect the care of their small child
10 during these significant lapses." (AR 495.) Dr. Anderson's opinions on this daily
11 frequency was necessarily based on Plaintiff's personal reporting of symptoms. The Court
12 agrees with Judge Snow, and finds that the ALJ's second reason is supported by specific
13 and legitimate reasons.

14 Plaintiff argues that "the District Court decision overstated symptoms," that
15 "Dingman is easily arousable" and that "even if this level of sleep would be neglect, this
16 is not proof that Dingman's sleep requirements lack credibility" because "Children can be
17 neglected." (Doc. 25 at 3-4.) Plaintiff's points are not persuasive. Even assuming,
18 *arguendo*, the ALJ's second reason was not legitimate, and that Plaintiff's testimony – and
19 thus Dr. Anderson's report – of the frequency of his narcoleptic episodes is true, the ALJ's
20 decision to discount Dr. Anderson's 2012 medical opinions is still supported by specific
21 and legitimate evidence, as noted above in the Court's analysis of the ALJ's first reason
22 for discounting the opinions. Accordingly, the Court finds that the ALJ provided specific
23 and legitimate reasons for discounting Dr. Anderson's 2012 medical opinions.

24 **E. August and September 2016 Opinions.**

25 Almost five years after Plaintiff's date of last insured, Dr. Anderson completed three
26 functional assessments of Plaintiff. (*See* AR 740-41 (August 2016); AR 742-43
27 (September 2016); AR 744-45 (October 2016).) In his decision, the ALJ only expressly
28 addresses the functional assessments from August and September 2016. (*See* AR 413.) In

1 August 2016, Dr. Anderson opined Plaintiff had “moderately severe” fatigue that would
2 cause him to be off-task 16-20% of a day and that he would miss 4-5 days of work per
3 month. (AR 741.) In September 2016, Dr. Anderson opined Plaintiff had “no” limitation
4 from his fatigue but would miss over 5 days of work per month. (AR 743.)

5 The ALJ provides the following three reasons for discounting Dr. Anderson’s
6 August and September 2016 opinions: (1) Dr. Anderson’s opinions are inconsistent with
7 the medical evidence in the record, including Dr. Briggs’ observation that the claimant’s
8 narcolepsy was well controlled with medication and was no longer a problem; (2) the
9 opinions are inconsistent with records indicating the claimant was cleared to return to work
10 with no restrictions in January 2015 (AR 413, 704, 705); and (3) Dr. Anderson’s statement
11 identifying chest pain as a side effect from Plaintiff’s medication (AR 741) is inconsistent
12 with his treatment records which indicate that the only side effects from Nuvigil were
13 tolerable headaches (AR 691). The Court need only address the first reason, which is both
14 specific and legitimate for discounting the opinions of Dr. Anderson.

15 As discussed above, there is sufficient evidence in the record that Plaintiff’s
16 impairments are under control with medication. (*See, e.g.*, AR 655, 691.) The ALJ did not
17 err by relying on Dr. Briggs’ concurrent evaluation that Plaintiff’s narcolepsy was well
18 controlled with medication and no longer a problem. *See Batson v. Comm’r of Soc. Sec.*,
19 359 F.3d 1190, 1195 (9th Cir. 2004) (holding that the ALJ did not err in giving minimal
20 weight to the views of treating physicians whose opinions were conclusory, in the form of
21 a check list, lacked substantive medical findings, and conflicted with the “results of a
22 consultative medical evaluation”); *Warre*, 439 F.3d at 1006 (“Impairments that can be
23 controlled effectively with medication are not disabling for the purpose of determining
24 eligibility for SSI benefits.”).

25 Plaintiff argues that the ALJ “did not explain *why* the conflict [that Dr. Briggs
26 observed Plaintiff’s narcolepsy was well controlled with medication and was no longer a
27 problem] was substantial evidence for disregarding Dr. Anderson’s opinions” and also that
28 “Dr. Briggs’ opinion did *not* constitute substantial evidence.” (Doc. 14 at 18.) Plaintiff’s

1 arguments fail.

2 As explained above, the fact that Plaintiff improved on Nuvigil to the point that he
3 was capable of seeking employment is a matter of Dr. Anderson's records. (*See* AR 691.)
4 Dr. Briggs evaluated Plaintiff while he was on that medication, prescribed by
5 Dr. Anderson, and found Plaintiff's narcolepsy to be controlled. (AR 653-64.) Plaintiff's
6 contention that Dr. Briggs's opinion is not substantial evidence because his evaluation was
7 conducted four years after the date of last insured, and he did not review any of Plaintiff's
8 prior medical records, is without merit. *See Orn*, 495 F.3d at 632 (when an examining
9 physician provides "independent clinical findings that differ from the findings of the
10 treating physician," such findings are "substantial evidence.").

11 Accordingly, the Court finds that the ALJ's decision to discount Dr. Anderson's
12 opinions as inconsistent with the medical evidence in the record was both specific and
13 legitimate, and is supported by substantial evidence.

14 **F. Opinions from August 2014 and October 2016.**

15 Plaintiff asserts that the ALJ committed harmful error by failing to address
16 Dr. Anderson's opinions from August 2014 and October 2016. (Doc. 14 at 9.) The
17 Commissioner concedes that the ALJ did not specifically address these opinions, but
18 argues that the error is harmless because these opinions are nearly identical to other
19 opinions of Dr. Anderson that the ALJ did address. (Doc. 15 at 16 n.4, 18 n.6.) The Court
20 agrees. *See Marsh v. Colvin*, 792 F.3d 1170, 1173 (9th Cir. 2015) ("We reject the idea that
21 not mentioning a treating source's medical opinion precludes use of harmless error
22 doctrine," but "an ALJ must discuss the relevant views of a treating source.").

23 Here, Dr. Anderson's August 2014 and October 2016 opinions are nearly identical
24 to other opinion evidence that the ALJ did expressly evaluate. (*Compare* AR 702 with
25 AR 386; *compare* AR 744-45 with AR 742-43.) The ALJ's failure to mention these
26 opinions is error, but that error is harmless because the relevant views of the treating source
27 were discussed and the error does not affect the ultimate nondisability determination of
28 the ALJ. *See Marsh*, 792 F.3d at 1173; *Molina*, 674 F.3d at 1111.

1 **3. Dr. Larry Nichols, M.D.**

2 In May 2011, prior to the date of last insured, Dr. Nichols examined Plaintiff after
3 conducting a review of his neurological treatment notes. (AR 267.) Dr. Nichols opined
4 Plaintiff could sit for six to eight hours per day, stand/walk for three hours per day, and had
5 a medium lifting capacity. (AR 270.) Dr. Nichols further opined Plaintiff had occasional
6 postural restrictions, and some environmental limitations. (AR 271.)

7 The ALJ afforded Dr. Nichols's opinion "partial weight." (AR 411.) In his decision,
8 the ALJ provided the following analysis:

9 Dr. Nichols indicated that the claimant could lift 50 pounds
10 occasionally and 25 pounds frequently and that he could sit for six to eight
11 hours in an eight-hour workday. This opinion is consistent with the medical
12 evidence of record discussed above and the claimant's activities of daily
13 living during the relevant period. However, Dr. Nichols also indicated that
14 the claimant could stand or walk for three hours in an eight-hour workday
15 and that the claimant would have limitations in climbing, stooping, kneeling,
16 crouching, crawling, and reaching as well as working

17 [Dr. Nichols's] opinions appear to be based on the claimant's
18 subjective complaints of exhaustion rather than objective medical signs or
19 laboratory findings. As discussed in more detail above, the claimant's
20 physical examination during the consultative examination was normal.
21 Moreover, the opinions regarding the claimant's standing/walking, postural,
22 and environmental limitations are inconsistent with the claimant's significant
23 activities of daily living during the relevant period. Therefore, the
24 undersigned has determined that the claimant was not limited to the extent
25 found by Dr. Nichols.

26 (*Id.*) In sum, the only material portion of Dr. Nichols opinion rejected by the ALJ, was
27 Dr. Nichols's conclusion that Plaintiff was limited to standing/walking for three hours per
28 day and occasional reaching. (*Id.*)

 Plaintiff challenges the ALJ's decision to give "partial weight" to the opinion of
Dr. Nichols, arguing that "the ALJ's evaluation of Dr. Nichol[s]'s opinion lacked
specificity, and he improperly cherry-picked from Dr. Nichols's findings to support his
non-disability finding." (Doc. 14 at 20-21.) But, Dr. Nichols's assessment indicated that
Plaintiff could walk normally, take his shoes off without difficulty, get in and out of a chair
without difficulty, get on and off of a table without difficulty, tandem walk normally, heel-
toe walk normally, hop and squat normally, walk without an assistive device, and that

1 Plaintiff has a normal range of motion in every joint and spinal region. (AR 269-70.) These
2 independent findings are inconsistent with Dr. Nichols's conclusion that Plaintiff can only
3 stand/walk up to three hours in a day.

4 Plaintiff argues that the ALJ "cherry-picked" the record (doc. 14 at 21), and notes
5 that Dr. Nichols made reference to Plaintiff's exhaustion (doc. 25 at 11). Plaintiff's
6 argument fails. Plaintiff ignores that the ALJ identified Plaintiff's subjective complaint of
7 exhaustion, and stated that Dr. Nichols's limitation assessments "appear to be based on
8 [Plaintiff's] subjective complaints of exhaustion rather than objective medical signs or
9 laboratory findings." (AR 412.) An ALJ may discount a physician's opinion if it is based
10 to a large extent on the Plaintiff's incredible self-reports. *Ghanim v. Colvin*, 763 F.3d 1154,
11 1162 (9th Cir. 2014.) The ALJ did not err by assessing partial weight to Dr. Nichols's
12 opinion.

13 **4. Dr. Brian Briggs, M.D.**

14 As mentioned above, Dr. Briggs examined Plaintiff on May 3, 2016. (AR 653.) In
15 his report, Dr. Briggs concluded that Plaintiff's conditions would not impose limitations
16 for 12 continuous months. (AR 657.) Additionally, Dr. Briggs found that Plaintiff had no
17 physical limitations, with the exception that Plaintiff can tolerate only occasional exposure
18 to unprotected heights, or frequent exposure to moving mechanical parts, and can only
19 frequently climb ladders or scaffolds. (AR 660-61.) Dr. Briggs also found that Plaintiff's
20 narcolepsy had improved to the point that it "is no longer an issue." (*Id.*)

21 In his decision, the ALJ assessed "some" weight to Dr. Briggs's opinion. (AR 412.)
22 Specifically, the ALJ provided:

23 Some weight is given the opinions of the consultative examiner, Brian
24 Briggs, M.D. (Exhibits 15F; 16F). Dr. Briggs indicated that the claimant had
25 no limitations. However, he also completed a residual functional capacity
26 assessment indicating that the claimant could occasionally lift and carry up
27 to 100 pounds occasionally and up to 50 pounds frequently, sit for four hours
28 at a time, stand for two hours at a time, and walk for two hours at a time. Dr.
Briggs further indicated that the claimant could frequently climb ladders or
scaffolds and continuously perform other postural activities. Although this
opinion is consistent with the finding that the claimant was not disabled, Dr.
Briggs did not have the opportunity to examine the claimant prior to the date
last insured. The undersigned finds that the claimant was more limited in his
ability to lift and carry and his ability to climb ladders, ropes, and scaffolds

1 during the relevant period and that the opinions of the State agency
2 consultants are more probative regarding the claimant's limitations at that
3 time. Further, the limitations in sitting and standing are not consistent with
4 the normal physical examination. However, Dr. Briggs' examination and
5 opinion show that the claimant continued to improve with medication.
Specifically, Dr. Briggs indicated that the claimant's narcolepsy improved
with medication and was no longer an issue. Additionally, the claimant's
physical examination remained normal.

6 (*Id.*) In sum, the ALJ rejected portions of Dr. Briggs's opinion stating that Plaintiff had no
7 limitations climbing ladders, or scaffolds, or performing other postural activities, and
8 instead only gave weight to the portions of Dr. Briggs's opinion that showed Plaintiff's
9 impairments had improved with medication – particularly that Plaintiff's narcolepsy was
10 no longer an issue. (*Id.*)

11 Plaintiff again argues that the ALJ cherry-picked from Dr. Briggs's opinion to
12 support his non-disability finding. (Doc. 14 at 21-22.) But the ALJ considered Dr. Briggs's
13 opinion as a whole, and only rejected the physical examination portions of Dr. Briggs's
14 opinion, instead finding that Plaintiff "was more limited in his ability to lift and carry and
15 his ability to climb ladders, ropes, and scaffolds during the relevant period[,] and that the
16 opinions of the State agency consultants are more probative regarding the claimant's
17 limitations at that time." (AR 412.) Plaintiff's argument that the ALJ cherry-picked from
18 Dr. Briggs's opinion fails.

19 Plaintiff argues that Dr. Briggs's opinion is not probative of whether Plaintiff was
20 disabled during the relevant time period because it is based on an examination that took
21 place after Plaintiff's date last insured. (Doc. 14 at 21-22.) But, Ninth Circuit case law
22 provides that "medical evaluations made after the expiration of a claimant's insured status
23 are relevant to an evaluation of the pre-expiration condition." *Smith v. Bowen*, 849 F.2d
24 1222, 1225 (9th Cir. 1988) (citing cases from the Eighth, Eleventh, Fourth, Second, and
25 Seventh Circuits); *see also Lingenfelter v. Astrue*, 504 F.3d 1028, 1033 n.3 (9th Cir. 2007)
26 (noting that medical reports made after the plaintiff's disability insurance lapsed were
27 relevant and were properly considered by the ALJ and the Appeals Council under *Smith*).
28 Additionally, in this instance, Dr. Briggs's opinion shows that Plaintiff's impairments are

1 controllable with treatment. And “[i]mpairments that can be controlled effectively with
2 medication are not disabling for the purpose of determining eligibility for SSI benefits.”
3 *Warre*, 439 F.3d at 1006.

4 Lastly, Plaintiff complains that the ALJ did not allow questioning of the authors of
5 the reports the ALJ cherry-picked from, and argues that “[i]n such circumstances, those
6 reports do not constitute substantial evidence on which treating physician opinion can be
7 rejected.” (Doc. 14 at 22 (citing *Richardson v. Perales*, 402 U.S. 389, 397 (1971).)
8 Plaintiff’s argument is not persuasive. *Richardson* stands for the proposition that a
9 physician’s report can constitute substantial evidence when a claimant has not exercised
10 the right to seek a subpoena. *See Richardson*, 402 U.S. at 397. Plaintiff improperly infers
11 that because a physician’s opinion may be treated as substantial evidence, despite that a
12 plaintiff has not sought a subpoena to depose that individual, the reverse must also be true,
13 and not granting a subpoena request means that the physicians’ opinion report is no longer
14 substantial evidence. The ALJ’s partial reliance on Dr. Briggs’s opinion was reasonable.

15 **5. Crediting Non-Examining Physician.**

16 Non-examining physicians, Drs. Rowse and Schenk, each opined that Plaintiff could
17 perform medium work, with postural limitations. (AR 64-66, 76-79.) The ALJ gave the
18 opinions of Drs. Rowse and Schenk “significant weight” because “[t]hese opinions are
19 consistent with the medical evidence discussed above including [Plaintiff’s] normal
20 physical and mental exams and his noted improvement with medication.” (AR 411.) The
21 ALJ adds that “these opinions are consistent with [Plaintiff’s] activities of daily living
22 during the relevant period which included caring for his young son during the day, driving,
23 and shopping in stores. (*Id.*)

24 Plaintiff argues that the ALJ committed legal error by according the opinions of
25 Drs. Rowse and Shenk significant weight because the ALJ’s justification for the assigned
26 weight is conclusory. (Doc. 14 at 20.) Plaintiff cites *Garrison*, 759 F.3d at 1012-13, for the
27 proposition that an “ALJ errors when he rejects opinion while doing nothing more than
28 asserting without explanation that another opinion is more persuasive.” (Doc. 14 at 20.)

1 Plaintiff's argument is not persuasive.

2 Plaintiff's argument contemplates a case dealing with the *rejection* of a medical
3 opinion, to argue that the ALJ needed to provide "clear, specific, [and] legitimate" reasons
4 for *accepting* the opinions of Drs. Rowse and Schenk. (*See id.*) But, the ALJ did not err in
5 failing to more fully explain why he credited the opinions of Drs. Rowse and Schenk,
6 because "the ALJ is under no obligation to provide reasons for interpreting and
7 incorporating medical opinions into the RFC assessment." *See Corthion v. Colvin*, No. CV-
8 15-00837-PHX-GMS, 2017 WL 68910, at *6 (D. Ariz. Jan. 6, 2017) citing *Turner v.*
9 *Comm'r of Soc. Sec.*, 613 F.3d 1217, 1223 (9th Cir. 2010); *Orteza v. Shalala*, 50 F.3d 748,
10 750 (9th Cir. 1995).

11 Plaintiff cites no authority stating that an ALJ commits legal error by *giving* weight
12 to a medical opinion, and the Court finds none. The Court concludes that the ALJ's decision
13 to credit the opinions of Drs. Rowse and Schenk was not legal error.

14 **c. The ALJ Did Not Err in Evaluating Plaintiff's Credibility.**

15 In evaluating the credibility of a claimant's testimony regarding subjective pain or
16 other symptoms, the ALJ is required to engage in a two-step analysis: (1) determine
17 whether the claimant presented objective medical evidence of an impairment that could
18 reasonably be expected to produce some degree of the pain or other symptoms alleged;
19 and, if so with no evidence of malingering, (2) reject the claimant's testimony about the
20 severity of the symptoms only by giving specific, clear, and convincing reasons for the
21 rejection. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

22 First, the ALJ found that Plaintiff's medically determinable impairments could
23 reasonably be expected to cause the alleged symptoms. Second, the ALJ found Plaintiff's
24 statements regarding the intensity, persistence, and limiting effects of the symptoms not
25 credible to the extent they are inconsistent with the ALJ's residual functional capacity
26 assessment. In other words, the ALJ found Plaintiff's statements not credible to the extent
27 he claims she is unable to perform in a competitive work environment.

28 At the first hearing, in October 2012, Plaintiff testified that he suffered from two

1 cataplexy episodes per day, causing him to lose muscle control for 5 to 30 seconds.
2 (AR 38.) He testified that his narcolepsy causes him to fall asleep three to four times per
3 day, for 20 to 45 minutes at a time, for a total of at least three 3 hours and 45 minutes during
4 the day, and up to 5 hours and 45 minutes. (AR 39-42.) Plaintiff testified that his
5 medications were ineffective. (AR 39-40.) Plaintiff states that his typical daily activities
6 include waking up, drinking coffee, talking with his kids, watching cartoons, picking up
7 “something that needs to be picked up,” and washing dishes. (AR 39-43.) Plaintiff also will
8 do chores around the house, including folding laundry, doing “a little” yard work, going
9 shopping, driving to the gas station, and cooking dinner occasionally. (AR 45-46.) Plaintiff
10 also testified that he was the sole caregiver for his four-year old son during the day while
11 his wife works. (AR 43, 47.)

12 At his second hearing, in September 2016, Plaintiff testified that his youngest son
13 was eight-years’ old at that time, which would make him about three-years’ old on the date
14 last insured. (AR 432, 436.) Plaintiff testified that, during the day, he had to “take naps
15 very regularly” and that he “can’t make it through long extended periods of time, like a
16 regular workday, without falling asleep.” (AR 436.) When asked how he was able to watch
17 a small child with his condition, Plaintiff responded “[w]ell, I would just take my naps at
18 the same time my child is taking his naps.” (AR 436.) Plaintiff testified that when his
19 narcolepsy “comes on” he feels “just extremely tired, oh, like a person that had been up all
20 day long, at the end of a long day.” (AR 442.) He stated that he “get[s] the same feeling
21 many times a day[,]” but noted that he “generally” gets a warning of “between maybe five
22 minutes, at the most, and less.” (*Id.*) He stated that he was able to take care of his child
23 during the day because “most definitely, unfortunately, I’m an incredibly light sleeper, so
24 I’m . . . the doorbell/the phone, anything would cause me to wake up.” (AR 443.)

25 Plaintiff also testified that he would take his kids to school, but that he would limit
26 himself on how much time he would be on the road at any one point. (AR 444.)
27 Specifically, Plaintiff would drive “a max of about two miles, at absolute most.” (*Id.*)
28 Plaintiff noted that his daughter’s school is “a mile and a half” away. (*Id.*) Plaintiff also

1 testified that if he received a narcoleptic warning, he would pull over and take a nap. (*Id.*)
2 Plaintiff also explained that the extreme cataplexy was not an issue, because it is caused by
3 “extreme emotion[,]” and Plaintiff asserts that if he is feeling emotional, he just does not
4 drive. (AR 444-45.)

5 Plaintiff asserts that he maintains a regular sleep schedule, per doctors’
6 recommendations, and that “sometimes . . . [he] would doze off in addition to the regular
7 schedule.” (AR 445.) He also asserts that he was never able to “get through a day without
8 taking a nap or falling asleep.” (*Id.*) Plaintiff testified that he was currently taking the
9 medication, Nuvigil. (AR 446.) Plaintiff testified that “it’s helped my symptoms. It’s not
10 eradicated them or however, you know, it’s . . . not a cure, but it’s definitely been beneficial
11 to me to . . . have the medicine.” (*Id.*) He testified that on the medication, he is able to take
12 a nap between noon and 1:00 pm each day, for about a half-hour, and another nap in the
13 afternoon. (AR 446-47.) Plaintiff also testified that the periods where he just falls asleep
14 are less frequent than before, and that now “it’s more isolated toward the afternoon.” (AR
15 447.) Plaintiff testified that he continues to use his CPAP machine for treatment of his sleep
16 apnea. (*Id.*)

17 The ALJ gave the following reasons for finding Plaintiff’s testimony not fully
18 credible: (1) Plaintiff’s daily activities are inconsistent with his alleged severity of
19 symptoms, and (2) Plaintiff’s statements regarding his symptoms and limitations “are
20 inconsistent with the evidence of record,” and (3) Plaintiff has received successful
21 treatment for narcolepsy with cataplexy. (AR 409-11.)

22 **A. Daily Activities.**

23 An ALJ may reject a claimant’s symptom testimony if it is inconsistent with the
24 claimant’s daily activities. *See Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005). But
25 “ALJs must be especially cautious in concluding that daily activities are inconsistent with
26 testimony” about subjective symptoms, like pain or fatigue, “because impairments that
27 would unquestionably preclude work and all the pressures of a workplace environment will
28 often be consistent with doing more than merely resting in bed all day.” *Garrison*, 759 F.3d

1 at 1016. Thus, an ALJ may use a claimant's daily activities to discredit symptom testimony
2 only if the claimant "spend[s] a *substantial part* of his day engaged in pursuits involving
3 the performance of physical functions that are transferable to a work setting." *Orn*, 495
4 F.3d at 639 (emphasis added); *Reddick*, 157 F.3d at 722 ("Only if the level of activity were
5 inconsistent with Claimant's claimed limitations would these activities have any bearing
6 on Claimant's credibility.").

7 Here, the ALJ found that Plaintiff's daily activities were inconsistent with his
8 symptom testimony. Specifically, the ALJ states that Plaintiff's testimony that he is able to
9 take care of his son by "tak[ing] [his] naps at the same time [his] child is taking his naps"
10 is inconsistent with the Plaintiff's "allegations that he would fall asleep four to five times
11 a day in addition to a two-hour nap and that he could fall asleep in public" and that he will
12 "fall[] asleep at inappropriate times and fall[] asleep unplanned" (AR 409). The ALJ makes
13 a second similar observation, stating that Plaintiff's "daily activities of caring for his young
14 son, taking his other children to school, shopping in stores, and driving are inconsistent
15 with [Plaintiff's] allegations of unplanned sleeping and uncontrolled cataleptic attacks.
16 (AR 410.) The ALJ also states that Plaintiff's symptom testimony is inconsistent with the
17 fact that "[Plaintiff] continued to show improvement after the date last insured." (AR 411
18 (identifying that "[Dr. Briggs] indicated that narcolepsy was no longer an issue due to
19 improvement with Nuvigil.")) The Court agrees, and finds that the reasoning provided by
20 the ALJ for discounting Plaintiff's symptom testimony is sufficient.

21 Plaintiff argues that the ALJ's reasoning fails because it does not explain *how* these
22 daily activities conflict with Plaintiff's testimony. (*See* doc. 25 at 15.) Plaintiff argues that
23 it is clear that Plaintiff's condition is not a "totally debilitating impairment." (*Id.*) Plaintiff
24 asserts that he has testified that his impairments permit him to "exercise to some amount,
25 read, watch television, and spend time with children[,] but they also cause him to "need
26 to nap[,] which creates "a lack of consistency in sustaining activities due to exhaustion."
27 (*Id.*) But, Plaintiff asserts, the ALJ does nothing to explain how the daily activities he
28 describes show that Plaintiff's symptoms are less severe than he has testified. (*Id.*)

1 Plaintiff's argument is unavailing.

2 The ALJ identifies specific inconsistencies between Plaintiff's testimony and the
3 record, including that (1) Plaintiff's testimony that he would fall asleep unplanned and
4 uncontrolled is inconsistent with being the sole caretaker for his young son; and
5 (2) Plaintiff's testimony that he would fall asleep in public places while sitting is
6 inconsistent with his testimony that he does not fall asleep in traffic. This is a clear and
7 convincing reason to discredit Plaintiff's testimony regarding the severity of his symptoms.
8 *See Thomas*, 278 F.3d at 954 ("Where the evidence is susceptible to more than one rational
9 interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must be
10 upheld.").

11 **B. Inconsistent with the Medical Record.**

12 The ALJ next found that Plaintiff's statements regarding his symptoms and
13 limitations "are inconsistent with the evidence of record." (AR 410.) Specifically, the ALJ
14 observes that "[i]n a sleep history questionnaire, [Plaintiff] reported a high chance of falling
15 asleep while sitting and reading, watching television, lying down to rest, and sitting quietly
16 after a meal (Exhibit 3F/23)." (*Id.*) "[Plaintiff] also reported a moderate chance of falling
17 asleep when while sitting inactive in a public place, as a passenger in a car for one hour
18 without a break, and while sitting and talking to someone (Exhibit 3F/23)." (*Id.*) But
19 "[Plaintiff] reported no chance of falling asleep while driving in a car stopped in a few
20 minutes of traffic (Exhibit 3F/23)." (*Id.*) The ALJ opines that "[Plaintiff's] allegations of
21 uncontrolled sleepiness and falling asleep in public places or while sitting are inconsistent
22 with his allegation that he would not fall asleep while sitting in traffic." (*Id.*)

23 Plaintiff argues that the questionnaire "addressed falling asleep while *driving* and
24 stopped in a *few* minutes of traffic. [(AR 259-61.)]" (Doc. 14 at 26.) "Driving is not
25 comparable to sitting inactive." (*Id.*) Plaintiff has also argues that he has reduced his
26 driving to only 1-2 miles at a time, and has stated on multiple occasions that he has been
27 forced to pull over and rest. (*See* AR 45-46, 443-44, 385, 709, 707, 700, 693.) As discussed
28 above, the Court agrees with the ALJ that Plaintiff's testimony regarding his ability to drive

1 is inconsistent with his testimony of falling asleep while sitting inactive. But this does not
2 show an inconsistency between Plaintiff's testimony and the medical records.

3 The ALJ also notes that

4 although the claimant alleged falling asleep in inappropriate places such as
5 doctor's offices (Exhibit 4E), he was routinely observed to be awake, alert,
6 and oriented during medical appointments and he had normal orientation,
7 memory, attention, language, and fund of knowledge (Exhibits 2F/2, 4, 6;
8 3F/1, 4; SF/2, 5; 7F/2; 11F/29). Moreover, while the claimant alleged that he
9 did not walk regularly or exercise because he was too tired (Exhibit 4E), he
10 told a treatment provider that he exercised two to three times a week (Exhibit
11 SF/4). The claimant was also encouraged to be physically active for at least
12 30 minutes on most or all days of the week (Exhibit SF/2). Specifically, it
13 was suggested that the claimant set a goal for moderate intensity physical
14 activities such as walking at a brisk pace and that he take the stairs rather
15 than the elevator and go for a walk after dinner (Exhibit SF/2). Accordingly,
16 the evidence does not support that the claimant was limited to the extent he
17 alleged.

18 (*Id.*) Each of these "inconsistencies with the medical record" identified by the ALJ are
19 taken out of context, and in a vacuum. Plaintiff has testified that he is easily aroused from
20 sleep, and that he has forewarning before a narcoleptic episode forces him to lie down.
21 Thus, it is not inconceivable that Plaintiff would fall asleep in a doctor's office while
22 waiting, and be woken when his name is called. Or that he would avoid exercise because
23 he felt a narcoleptic episode coming on. Additionally, Plaintiff's testimony is not
24 inconsistent with the medical record because physicians have advised him to be physically
25 active, park far from the door at stores, or to take the stairs instead of the elevator. In fact,
26 those recommendations and advisements do not speak to Plaintiff's symptoms at all.

27 The Court finds that the ALJ's reasoning that Plaintiff's symptom testimony is
28 inconsistent with the medical record is not supported by substantial evidence that "is
specific, clear, and convincing." *See Vasquez*, 572 F.3d at 591. Accordingly, this reasoning
by the ALJ fails to justify discrediting Plaintiff's symptom testimony.

29 C. Plaintiff has received Successful Treatment.

30 The ALJ's third reason for discounting Plaintiff's symptom testimony is that the
31 record shows he has "received treatment for narcolepsy with cataplexy." (AR 410.)
32 Initially, Plaintiff's progress was stunted because he either was not on medication, or would

1 fail to consistently take the medication when prescribed. (AR 410.) Specifically, the ALJ
2 states that

3 In August 2008, the claimant told a treating physician that he had a 15-year
4 history of narcolepsy and cataplexy, but he had not received treatment for
5 these conditions (Exhibit 1F/2). In December 2009, it was noted that the
6 claimant was not currently on medication (Exhibit 2F/5). The claimant was
7 prescribed medication for his narcolepsy with cataplexy (Exhibit 2F/7). After
8 beginning medication, it was noted that the claimant was no longer falling
9 down due to cataplexy (Exhibit 2F/1). However, the claimant was
inconsistent with taking his medication. In May 2010, it was noted that the
claimant stopped taking his medication after one month because he felt it did
not help him (Exhibit 2F/4). Further, a treatment provider indicated that it
was difficult to assess the efficacy of the medication Xyrem because the
claimant stopped using it (Exhibit 13F/5). Subsequently, it was noted that the
claimant's symptoms improved with Xyrem (Exhibit 7F/1).

10 (AR 410-411.) The ALJ also notes that "[Plaintiff] continued to show improvement after
11 the date last insured. Specifically, it was noted that the claimant had relief from Nuvigil
12 and that he was doing well with Nuvigil (Exhibit 18F/1, 17)." (AR 411.) Further, it was
13 observed by consultative examiner, Dr. Briggs, "that narcolepsy was no longer an issue
14 due to improvement with Nuvigil." (AR 411; 653.)

15 The Commissioner argues that this evidence cited by the ALJ shows that Plaintiff's
16 narcolepsy was controlled with treatment after Plaintiff's date last insured, and that "the
17 salient question under *Warre* is whether the condition could be controlled with medication.
18 Here, the consultative examination, as well as Dr. Anderson's treatment notes . . . support
19 the ALJ's finding." (Doc. 15 at 11.) The Court agrees.

20 Plaintiff argues that the ALJ's opinion is identifying a "lack" of evidence as a reason
21 for discounting Plaintiff's testimony, and that the Commissioner is engaging in improper
22 *post hoc* reasoning. (Doc. 25 at 17 (citing *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d
23 1219, 1225 (9th Cir. 2009) ("Longstanding principles of administrative law require us to
24 review the ALJ's decision based on the reasoning and factual findings offered by the ALJ
25 – not *post hoc* rationalizations that attempted to intuit what the adjudicator may have been
26 thinking.")). Plaintiff's argument is not persuasive.

27 This is not *post hoc* reasoning. In his decision, the ALJ clearly indicates that
28 Plaintiff's condition was controlled with treatment. (See AR 411.) The ALJ also indicates

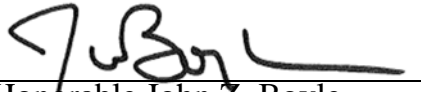
1 that Plaintiff showed improvement with the medication Xyrem before he stopped taking it
2 because “he felt it did not help him.” (*Id.*) The ALJ also notes that, when treated with
3 Nuvigil, Plaintiff’s narcolepsy “was no longer an issue[,]” according to Dr. Briggs. (*Id.*)
4 The Court finds the ALJ’s reasoning to present specific clear, and convincing reasons for
5 discounting Plaintiff’s testimony. *See Vasquez*, 572 F.3d at 591.

6 **V. Conclusion.**

7 The ALJ has provided sufficient, clear and convincing reasons for discounting
8 Plaintiff’s symptom testimony. Specifically, The ALJ’s reasoning that (1) Plaintiff’s daily
9 activities are inconsistent with his alleged severity of symptoms, and (2) Plaintiff has
10 received successful treatment for narcolepsy with cataplexy (AR 409-11), constitute clear
11 and convincing reasons to discount Plaintiff’s testimony. Additionally, the ALJ has
12 provided specific and legitimate reasons for discounting the opinion evidence of Plaintiff’s
13 treating physician, Dr. Anderson. Accordingly, the Court finds that the ALJ did not engage
14 in legal error and that his decision is supported by substantial evidence. Accordingly,

15 **IT IS ORDERED** that the final decision of the Commissioner of Social Security is
16 **affirmed**. The Clerk shall enter judgment accordingly and **terminate** this case.

17 Dated this 27th day of September, 2018.

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21 Honorable John Z. Boyle
22 United States Magistrate Judge
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